

Statement of Mayor Rudolph W. Giuliani
on
Federal Barriers to Common Sense Cleanups
to the
Finance and Hazardous Materials Subcommittee
of the
Committee on Commerce
United State House of Representatives
March 7, 1997

Summary:

- Current Superfund law fails to differentiate between Brownfields and Superfund sites.
- Superfund's severe liability provisions create a tremendous disincentive for property owners, developers, and investors to purchase, finance, clean up, and redevelop Brownfields.
- An estimated one-fifth of all industrially-zoned land throughout New York City, nearly 4,000 acres, is vacant. There is also another 1,000 acres of underutilized property and buildings. The future development of many of these sites is directly affected by CERCLA liability issues.
- Cities like New York need low-cost and market-rate housing, retail businesses, industry, and jobs. Vacant and underutilized land must be redeveloped to meet these needs.
- The New York City Brownfields Initiative was established to identify obstacles and solutions to the cleanup and reuse of Brownfields.
- Legislative Recommendations:
 - Legislation should include a definition of brownfields that differentiates these sites from Superfund sites and includes the range of existing and proposed land uses
 - It must limit liability for owners:
 - a) New York supports the prospective purchaser exemption.
 - b) The City proposes a municipal liability exemption.
 - Cleanup standards must be predictable.

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I would like to thank Chairman Oxley, Congressman Manton, and members of the House Subcommittee on Finance and Hazardous Materials for sponsoring this oversight hearing in New York City. Amending the Comprehensive Environmental Response, Compensation and Liability Act of 1980 to facilitate the appropriate clean up and reuse of contaminated property is of paramount importance to New York City.

Across the City's five boroughs there are thousands of acres of real estate where the actual or suspected presence of hazardous materials is a major impediment to development. These sites are described in the vernacular as "brownfields". While many of these sites may be only slightly or moderately contaminated and are not Superfund sites, the existing federal law does not differentiate between the two.

Hastily conceived in response to the tragic environmental devastation of Love Canal, the premise of CERCLA was to punish the polluter. This approach may make sense for some heavily contaminated sites where companies were grossly negligent and can be held accountable for their actions. It does not make sense for the majority of sites that have either no contamination or limited amounts of contamination and where the existing or future property owner wants to do the right thing. The severe liability provisions within the law create a tremendous disincentive for property owners, developers, and investors to purchase, finance, clean up and redevelop these sites.

The strength of New York City has been its ability to reinvent itself through the decades. Once a manufacturing center in the early part of this century, the City's economy has changed to a more service-based industry post World War II. One of the negative results of this economic transformation is that there are now thousands of vacant and underutilized industrial sites that tend to be concentrated along our waterfronts and transportation corridors.

In a study completed by the Department of City Planning in the early 1990's, it was estimated that almost a fifth of all industrially zoned land in the City, nearly 4,000 acres, is vacant. There are another thousand acres of underutilized property and buildings. Examples of these locations include: Long Island City, Queens,... Greenpoint, Brooklyn,... St. George and Rossville, Staten Island,... East Harlem, Manhattan, and Hunts Point in the Bronx. Many of these sites may not actually be contaminated but may fall in the rubric of liability concern because of past uses. Rather than invest the money in assessing these sites and run the risk of assuming some level of liability, developers will often forego these sites and develop pristine sites in other communities.

The historical development pattern of our manufacturing areas -- are precisely where their inherent locational value is greatest. Along the waterfront, where we find some of the most spectacular views in the world, where our citizens want to have recreational access, where residential developments are most desirable, where manufacturing and transportation-related uses can take advantage of our magnificent harbor. Along rail lines -- whose development we want to expand with our plans for a rail-tunnel connection to the rest of the continent -- where the cost of doing business in the city can be reduced significantly. Along highway corridors, which offer unrivaled access to the densest agglomeration of businesses and consumers in the nation.

The City has a pressing need to develop new low-cost and market-rate housing, to develop new retail outlets that offer quality merchandise at affordable prices, to foster new industries that can absorb the energy and initiative of our labor force. Our needs are too great to allow us the luxury of leaving such a vast chunk of our land area desolate.

The City has and will continue to invest substantial resources to facilitate the productive reuse of these sites, which will benefit the neighborhoods directly affected as well as the City as a whole. We are developing zoning proposals that will facilitate the redevelopment of these sites by recognizing market demand and community needs. We work with businesses on a regular basis to facilitate their location or expansion within the City.

However, this is not enough. The number and nature of these sites dictates a need for collaborative thinking and efforts amongst all levels of government and -- importantly -- harnessing the resources and participation of the private sector to spur their revitalization.

The opportunities associated with cleaning up our environment while enhancing our economy are why my Administration has launched the New York City Brownfields Initiative. With the assistance of a pilot-city grant from the U.S. EPA, we have formed a public-private task force composed of some two hundred representatives who represent the multi-faceted range of stakeholders on this issue -- from developers to environmental groups to engineering consultants to community board members. We are working closely with EPA, DEC and affected stakeholders to identify obstacles and solutions to the cleanup and reuse of these sites.

But if we are going to make the most of our brownfield opportunities, we are going to need legislative changes to the Superfund Act itself. These are some points that we believe these amendments should address:

- I. Legislation Should Include a Definition of Brownfields That Differentiates These Sites from Superfund Sites and Includes the Range of Existing and Proposed Land Uses

Many New York brownfields with excellent redevelopment potential are vacant or underutilized sites, some potentially contaminated by industrial or commercial use and others by illegal dumping. Proposed legislative amendments to date have defined brownfields as including only “abandoned, idled or underused commercial or industrial facilities.” To be meaningful for New York, and we suspect for other urban cities, the definition of brownfields should be responsive to the potential or actual site conditions rather than its existing land use. Sites, regardless of existing use ---whether they are

commercial, industrial, residential, community facilities or open space, may be contaminated as a result of illegal dumping or former/adjacent land uses. It is important that these sites be able to meet any proposed definition of brownfields.

In New York, we urgently need new housing. As a result, the best use for many brownfield sites, particularly along the waterfront after careful and appropriate cleanup, will be for residential or mixed residential/commercial use. There are a number of waterfront projects such as Battery Park City, Riverside South and Queens West that characterize this kind of waterfront development. Current legislative proposals, however, have focused only on commercial and industrial redevelopment as an end use for brownfield sites. We urge that the committee's brownfields legislation recognize that residential redevelopment of brownfields is viable, and in many cases the desirable end use, both economically and to the affected community.

II. Legislation Must Limit Liability for Future Owners

A. We Support the Prospective Purchaser Exception

The fear of strict, joint and several liability for any and all past contamination deters many developers from attempting to redevelop brownfields. Accordingly, we strongly support an amendment to CERCLA, like the one in Senator Smith and Chafee's bill, which exempts prospective purchasers from liability if they perform a full site assessment and responsibly address any contamination they find.

B. We Propose a Municipal Liability Exemption

The threat of huge cleanup costs causes many owners to abandon contaminated properties or, more often, “warehouse” them in an attempt to avoid the attention of regulators. At present, no one can acquire or assemble these properties without becoming liable. To help address this problem, I encourage the Committee to introduce legislation broadening the liability exclusion for municipalities. Under existing law, a city which acquires property by purchase faces the same unlimited liability as a private, for-profit developer.

Whatever sense imposing liability without fault on a private, profit-seeking entity makes, it makes no sense for a public body acting in the public interest. A city should be liable for wrongdoing, not where it has acted responsibly for the common good. Existing law provides that a trustee – who like a city owns property for the benefit of others – will be liable only for negligence. I ask that the committee adopt the same standard for municipalities. In addition, municipalities should be entitled to the same standing under CERCLA as the state and federal governments, with respect to pursuing polluters.

III. Predictable Standards for Cleanup

Given the interest in this issue by EPA, New York State, other states and cities around the country, we believe it is time for all parties to work together to develop reasonable approaches and standards for hazardous material cleanup.

We support measured cleanup standards which protect human health and the environment without putting unnecessary burdens on revitalization efforts. The health of our citizens must always be our first and foremost concern. But good health and general

well-being can be harmed by poor housing, poverty and dirty air as much as by contaminated soil. Overprotective cleanup standards raise beyond reach the cost of building homes and constructing job-generating industries. They also force developers to build away from cities in places reachable only by car, worsening non-compliance with clean air standards. Excessive cleanup standards thereby harm exactly the people they are trying to help. In light of the harm caused by excessive assessment and cleanup approaches, we support standards which guard against any and all realistic threats to human health but do not impose inappropriate and unnecessary costs on reuse or redevelopment of brownfield sites.

MAYOR RUDOLPH W. GIULIANI

On November 3, 1993, Rudolph William Giuliani was elected New York City's 107th mayor, winning on his vision for a redefined City government. Although Giuliani is a Republican, he ran as the nominee of the Republican, Liberal and Independent fusion parties.

In a City of over seven and a half million people with the most diverse ethnic background of any city in the nation, and where Democrats outnumber Republicans five to one, Mayor Giuliani garnered support from a diverse coalition of New York City's electorate.

Since taking office, Mayor Giuliani's reinvention of government and his focus on quality-of-life issues have resulted in tangible achievements for New York City, the "Capital of the World."

Under Mayor Giuliani's leadership, New York City has experienced an unprecedented 39% reduction in serious crime over the past three years, and is at its lowest rate in over 25 years.

Mayor Giuliani's crime-fighting success is the result of an ambitious program of strategies aimed at specific areas of criminal activity: Illegal guns, drugs, youth crime, domestic violence, car theft, police corruption, and quality-of-life initiatives. By treating illegal vending, graffiti, vandalism and squeegee operators as serious problems that adversely affect living standards in New York City, Mayor Giuliani has improved the quality of life for all New Yorkers.

This strategy is the implementation of the "Broken Windows" Theory, which holds that one neglected broken window in a building will soon lead to many other broken windows. By analogy, the arrest for petty offenses such as subway fare evasion and overly aggressive panhandlers often leads to the capture of suspects wanted for more serious crimes.

In addition, the Mayor and the NYPD are using the latest computer mapping technology to track crime statistics, pinpoint any unusual activity, and deploy officers accordingly. Also known as "COMPSTAT", this strategy is an innovative and highly effective tool that has been studied by police departments throughout the United States in hopes of copying the success of the NYPD.

The Mayor's commitment to keeping New Yorkers safe and secure is perhaps best exemplified by the dramatic drop in subway crime. New York City subways are the safest they have been since 1965. Mayor Giuliani has also shown his staunch commitment to the safety and security of New Yorkers through his continuing support for legislation to ban assault weapons, and his efforts to end parole for violent offenders. All of these strategies have made New York City the safest large city in America, according to the most recent F.B.I. Crime Report.

Within his three years in office, the Mayor achieved an historic merger of the City's Transit and Housing Police Departments with the NYPD, a feat past New York mayors have tried but were unable to accomplish. The merger enhanced the enforcement capabilities of the transit system and the City's public housing developments, while eliminating redundant administrative functions.

Before Mayor Giuliani took office, many economists and business leaders complained that New York City was no longer competitive in attracting businesses due to high taxes and administrative regulations. Mayor Giuliani moved aggressively to reverse this attitude by creating a more favorable climate for economic growth.

Mayor Giuliani has reduced taxes and onerous regulations, and has worked with the business community to promote job growth and business retention. By signing several retention agreements with Fortune 500 companies, the Giuliani Administration has stemmed the tide of corporations fleeing New York City. The Mayor's initiatives are now attracting new businesses instead of losing them, sparking a massive infusion of private sector capital investment throughout the City.

For example, reductions in the City's hotel occupancy tax has fueled a boom in our tourism industry, with hotel occupancy rates at record levels. The result of all this new economic activity is more jobs for New Yorkers who need them: The City retained more jobs in the first year of his administration than in the four previous years combined. In fact, the City added more than 110,000 new private sector jobs since Mayor Giuliani took office.

Recognizing that the size of New York City's government was out of balance with its economy, Mayor Giuliani has moved to reorder the balance between our public and private sectors by downsizing City government, while promoting private sector growth. The Mayor was able to shed over 21,000 jobs without layoffs, but by working with the City's labor unions, instituting an innovative severance program that is now being studied by other municipalities. Instead of working as adversaries, the City's unions have cooperated with the Mayor to achieve historic money-saving agreements including new contracts with school bus drivers, school custodians, sanitation workers, and school teachers.

Mayor Giuliani has also launched the largest and most successful workfare program in the City's history. He has returned the principle of reciprocity to this system, ensuring that eligible, able-bodied welfare recipients work in exchange for their benefits. Through the Work Experience Program (WEP), thousands of people have moved off the welfare rolls and into full-time jobs. The Administration has also rooted out fraud in our welfare system by initiating finger-imaging and full verification background checks. By eliminating fraud and moving people from welfare to work, the Giuliani Administration has reduced our city's welfare roles by an unprecedented 220,000.

Recognizing that our children are our future and that their education is the best way to ensure a promising future, Mayor Giuliani has advocated a clear agenda of reform for New York City's public schools. Mayor Giuliani has focused his efforts on directing budget dollars to the classroom instead of spending them on the school administration. His strategy is based on improving accountability, increasing financial responsibility, reducing bureaucracy, imposing school-based budgeting, and returning authority to educators and parents. The Mayor is also committed to improving the safety of our schools by advocating a supervisory role for the NYPD in school security.

Perhaps Mayor Giuliani's most significant achievement is inspiring a new, positive "can do" attitude in New York City. No longer seen as the "Rotten Apple" and "unmanageable," New York City is now emulated by other cities. Its success in reducing crime, improving the quality of life, sparking the economy, all the while maintaining the social safety net, has become the example world cities are following. Mayor Giuliani is committed to maintaining New York City's position as the "Capital of the World" and as America's premier financial engine. New York City's importance to the national economy is exemplified by this little known fact: the City sends many billions more in tax revenue to Washington than it receives in federal aid.

In 1944, Rudolph W. Giuliani was born to a working class family in Brooklyn, New York. As the grandson of Italian immigrants, Mayor Giuliani learned a strong work ethic and a deep respect for

America's ideal of equal opportunity. He attended Bishop Loughlin Memorial High School (Class of '61) in Brooklyn, Manhattan College (Class of '65) in the Bronx and New York University Law School in Manhattan, graduating magna cum laude in 1968.

Upon graduation, Rudy Giuliani clerked for Judge Lloyd MacMahon, United States District Judge for the Southern District of New York. In 1970, Giuliani joined the office of the U.S. Attorney. At age 29, he was named Chief of the Narcotics Unit and rose to serve as Executive U.S. Attorney. In 1975, Giuliani was recruited to Washington D.C. where he was named Associate Deputy Attorney General and chief of staff to the Deputy Attorney General. From 1977 to 1981, Giuliani returned to the private sector and practiced law at the New York firm of Patterson, Belknap, Webb and Tyler.

In 1981, Giuliani was named Associate Attorney General, the third highest position in the Department of Justice, placing him in command of nearly 30,000 Federal employees and a \$1 billion budget. As Associate Attorney General, Giuliani supervised all of the U.S. Attorney Offices' Federal law enforcement agencies, the Bureau of Corrections, the Drug Enforcement Agency, and the U.S. Marshals.

In 1983, Giuliani was appointed U.S. Attorney for the Southern District of New York, where he spearheaded the effort to jail drug dealers, fight organized crime, break the web of corruption in government, and prosecute white-collar criminals. He tirelessly championed the rights of the disabled and refused to use Department of Justice hiring questionnaires that discriminated against gays and lesbians. Few U.S. Attorneys in history can match his superb record of 4,152 convictions with only 25 reversals.

In 1989, after leaving the Justice Department and returning to private practice, Giuliani entered the race for mayor of New York City, losing to David Dinkins by the closest margin in New York City history. Following the 1989 election, Giuliani continued to practice law privately while remaining very active in community service.

He is married to Donna Hanover, veteran broadcast journalist and correspondent for Fox 5-TV's morning show, "Good Day New York," and anchor of "Food, News and Views," on cable's Television Food Network. They reside at Gracie Mansion with their two children, Andrew and Caroline.